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The Administrative Procedures Act (APA) formal adjudication procedures contained in 5 U.S.C. §§ 556 and 557 apply, with some exceptions, "in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing. . . ." 5 U.S.C. § 554(a). In an "APA hearing" under section 554, one requirement is that the presiding official at the hearing shall either be "the agency; . . . one or more members of the body which comprises the agency; or . . . one or more administrative law judges. . . ." 5 U.S.C. § 556(b).

The issue of whether a Social Security hearing is a formal adjudication over which an ALJ is required to preside has never been definitively resolved. Neither the text nor the legislative history of the Social Security Act (Act) itself explicitly requires that the hearing under the Act be held "on the record." Rather, sections 205(b) and 1631(c)(1)(A) of the Act state that if a hearing is held, the Commissioner "shall, on the basis of evidence adduced at the hearing, affirm, modify or reverse the Commissioner's findings of fact and such decision." In Richardson v. Perales, 402 U.S. 389, 409 (1971), the Supreme Court agreed with the Government's position that it need not address the broad issue of whether the APA applies to our hearings process. Instead, the Court stated that, "We need not decide whether the APA has general application to Social Security disability claims, for the Social Security administrative procedure does not vary from that prescribed by the APA. Indeed, the latter is modeled upon the Social Security Act."

Congress itself has made differing statements over the years regarding the applicability of the formal adjudication provisions of the APA to our hearing process. Congress has sometimes indicated its belief that our hearings are formal adjudications under the APA and has explicitly referred to the use of ALJs in some provisions in the Act. See section 206(a)(3) of the Act (referring to a review of attorney fee awards under section 206(a) of the Act by the ALJ); section 223(h)(1) of the Act (referring to the award of interim benefits in certain cases "in which an administrative law judge has determined after a hearing" that an individual is disabled.) On the other hand, Congress has also stated in legislative history that our use of ALJs is not required by law. See H.R. Rep. No. 103-670, at 98, 103rd Cong., 2nd Sess.